

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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**BANKERS LIFE AND CASUALTY
COMPANY, et al.,**

Case No. 2:22-CV-1474 JCM (DJA)

ORDER

Plaintiff(s),

V.

ANDRES SANCHEZ, et al.,

Defendant(s).

Presently before the court are Bankers Life and Casualty Company and Bankers Life Securities, Inc. (collectively, “plaintiffs”)’s motions for a temporary restraining order and preliminary injunction (ECF Nos 3; 4). Andres Sanchez and Berenice Diaz (collectively, “plaintiffs”) failed to respond, and the time to do so has now passed.

I. Background

Defendants are former employees of Bankers Life and Casualty Company, an insurance company. (ECF No. 1). During their employment, defendants had access to a database containing customer information, including personal data, applicable policies and products, and policyholder goals. (*Id.*) Allegedly, defendants downloaded copies of some of the records in that customer database after they each resigned their employment. (*Id.*) Plaintiffs allege that this downloading of data contravened employment agreements and data security agreements that each defendant had executed as a condition of employment. (*Id.*)

Further, plaintiffs allege that the data each defendant downloaded constitutes trade secret information. (*Id.*) Further, plaintiffs contend that defendants are using that customer data to convince plaintiffs' customers to defect to defendants' current employer. (*Id.*) Plaintiffs now

1 bring this motion for a temporary restraining order and preliminary injunction to prevent
 2 defendants from using that allegedly misappropriated data and to compel its return. (ECF Nos.
 3; 4).

4 **II. Legal Standard**

5 Under Federal Rule of Civil Procedure 65, a court may issue a temporary restraining
 6 order (“TRO”) when the movant alleges “specific facts in an affidavit” that immediate and
 7 irreparable harm will occur before the adverse party can be heard in opposition. FED. R. CIV. P.
 8 65(b)(1)(A). TROs and preliminary injunctions are extraordinary remedies meant to “preserve
 9 the status quo” and “prevent irreparable loss of rights prior to judgment.” *Estes v. Gaston*, No.
 10 2:12-cv-1853-JCM-VCF, 2012 WL 5839490, at *2 (D. Nev. Nov. 16, 2012); *see also Sierra On-*
 11 *Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). The standard for
 12 granting a TRO is “substantially identical” to the standard for granting a preliminary injunction.
 13 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

14 The court considers the following elements in determining whether to grant preliminary
 15 injunctive relief: (1) a likelihood of success on the merits; (2) a likelihood of irreparable injury if
 16 preliminary relief is not granted; (3) balance of hardships; and (4) advancement of the public
 17 interest. *Winter v. N.R.D.C.*, 555 U.S. 7, 20 (2008); *Stanley v. Univ. of S. California*, 13 F.3d
 18 1313, 1319 (9th Cir. 1994).

19 The movant must satisfy all four elements; however, “a stronger showing of one element
 20 may offset a weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
 21 1127, 1131 (9th Cir. 2011). This “sliding scale” approach dictates that when the balance of
 22 hardships weighs heavily in the movant’s favor, he only needs to demonstrate “serious questions
 23 going to the merits.” *Id.* at 1135. Yet, “[o]f course, plaintiffs must also satisfy the other *Winter*
 24 factors.” *Id.*

25 **III. Discussion**

26 Having considered the *Winter* factors, the court DENIES plaintiffs’ motions for a
 27 temporary restraining order and preliminary injunction (ECF Nos. 3; 4); primarily because they
 28 fail to show a likelihood of irreparable injury.

Though plaintiffs aver that they risk irreparable harm from defendants' use of allegedly confidential information, plaintiffs have provided nothing to substantiate that claim. While plaintiffs need only show a likelihood—rather than a probability—of irreparable harm, their conclusory allegations of some unauthorized disclosure are unavailing. Plaintiffs provide no evidence that defendants have actually disclosed or used any of the allegedly misappropriated data.¹ Without more, plaintiff fails to allege any harm, much less irreparable harm.

Without a likelihood of irreparable harm, plaintiffs are not entitled to injunctive relief under the traditional or sliding scale approach. *See Cottrell*, 632 F.3d at 1131.

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiffs' motions for a temporary restraining order and preliminary injunction (ECF Nos. 3; 4) be, and the same hereby are, DENIED.

DATED September 30, 2022.



UNITED STATES DISTRICT JUDGE

¹ Indeed, plaintiffs' only evidence of any misappropriation of data are two unintelligible "download reports" that give no indication of what specific data was downloaded nor what potential customers were affected. *See* (ECF No. 1-11; 1-12). It is unclear from this evidence whether the customer Diaz tried to convince to defect was even a part of the alleged download. *See* (ECF No. 1-13).